

1 Jeffrey T. Maehr

2 c/o 924 E. Stollsteimer Rd

Certified Mail #: 7007-0710-0004-4779-1976

3 Pagosa Springs, Colorado [81147]

4 970-731-9724

5
6 April 23, 2008

7
8 **U.S. District Court**

9 **106 S. Federal Pl.**

10 **Santa Fe, NM 87501**

11
12 **PETITION TO QUASH SUMMONS**

13 **Brief and Memorandum of Law**

14 **Declaratory Relief Request**

15
16 **re: Summons to Aurora Loan Service, Custodian of Records, 125 Lincoln Ave., Ste. #223,**
17 **Santa, Fe, NM 87501. Jeffrey T. Maehr, Petitioner; U.S., Respondent.**

18
19 Jeffrey T. Maehr, Pro Se, acting under Private Attorney General Laws, in cooperation with other
20 Attorneys' General, reporting investigative evidence to the U.S. Department of Justice, and
21 depending on equal protection under the Constitution, The Judicial machinery of the Rule of
22 Law, Rules of Evidence and Rules of Civil Procedure, comes now before this Honorable Court,

23 and moves this Honorable Court to take Mandatory Judicial Notice under Federal Rule 201(d) of
24 the following:

25
26 a. The United States Supreme Court, in *Haines v Kerner* 404 U.S. 519 (1972) stated that
27 **all litigants defending themselves must** be afforded the opportunity to present their evidence
28 and that the Court should look to the substance of the complaint rather than the form, and that a
29 minimal amount of evidence is necessary to support contention of lack of good faith. Fortney v.
30 U.S., C.A.9 (Nev.) 1995, 59 F.3d 117.

31
32 b) *In Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir.1998) (per curiam):
33 “*Pro se* pleadings are held to a less stringent standard than pleadings drafted by attorneys and
34 will, therefore, be liberally construed.”

35
36 c) Substantive federal rights are grounded in Federal Constitution and laws enacted by
37 Congress and are not created by these rules or by a mere pleading of the rules. *Weiner v. Bank of*
38 *King of Perussia*, D.C.Pa. 1973, 358 f.Supp. 684.

39
40 d) Substantive rights remain unaffected by these rules and will be enforced. *Gil/son v.*
41 *Vendome Petroleum Corporation*, D.C.La. 1940, 35 Supp. 815.

42
43 e) The spirit of all these rules is to settle controversies upon their merits rather than to
44 dismiss actions on technical grounds, to permit amendments liberally... *Fierstein v. Piper*

45 Aircraft Corp., D.C.Pa. 1948, 79 F.Supp. 217.

46
47 f) It is contrary to spirit of these rules for decisions on merits to be avoided on basis of
48 mere technicalities. 'Forman v. Davis, Mass.19632, 83 S.Ct. 227, 371 U.S. 178m 9 K,Ed2d 222,
49 on remand 316 F.2d 254.

50
51 g) Court and litigants must follow these rules in same manner as they must obey a
52 statute. Beasley v. U.S., D.C.S.C.1948, 81, F.Supp. 518

53
54 h) These rules have the same effect as a statute and are as binding upon the court as upon
55 counsel. Barrezueta v. Sword S.S. Line, D.C.N.Y. 1939, 27 F.Supp. 935.

56
57 I) The congressional authority given Supreme Court to adopt these rules was limited to
58 matters of procedure, and it was expressly provided that substantive rights should neither be
59 abridged, enlarged nor modified. John R. Alley & Co. v. Federal Nat. Bank of Shawnee,
60 Shawnee County, Okl., C.C.A. OkI. 1942, 124 F.2d 995.

61
62 j) Spirit of these rules is that technical requirements are abolished and that judgments
63 should be founded on facts and not on formalistic defects. Builders Corp. of America v.
64 U.S.,C.A.Cal. 1958, 259 F.2d 766.

65
66 k) "This Constitution, and the laws of the United States which shall be made in

67 pursuance thereof;... shall be the supreme law of the land; and the judges in every state shall be
68 bound thereby... The Senators and Representatives and members of the State legislature, and all
69 executive and judicial officers of the United States and the several States, shall be bound
70 thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." The
71 Constitution of the united States of America, Article VI, Cl 2, 3.

72
73 l) "The United States is entirely a creature of the Constitution. Its power and authority
74 have no other source. It can only act in accordance with all the limitations imposed by the
75 Constitution." Reid v Covert 354 US 1, 1957.

76
77 m) A judge is an officer of the court, as well as are all attorneys. A state judge is a state
78 judicial officer, paid by the State to act impartially and lawfully. A federal judge is a federal
79 judicial officer, paid by the federal government to act impartially and lawfully. *A judge is not the*
80 *court.* People v. Zajic, 88 Ill.App.3d 477, 410 N.E.2d 626 (1980).

81
82 n) "Fraud upon the court is fraud which is directed to the judicial machinery itself and is
83 not fraud between the parties or fraudulent documents, false statements or perjury. ... It is where
84 the court or a member is corrupted or influenced or influence is attempted or where the judge has
85 not performed his judicial function --- thus where the impartial functions of the court have been
86 directly corrupted." Bulloch v. United States, 763 F.2d 1115, 1121 (10th Cir. 1985). (See
87 attachment, labeled Exhibit G).

88

89 **Petitioner disputes legal veracity of this summons and demands strict proof**
90 **consonant with the Federal Rules of Evidence and Civil Procedure.**

91
92 **STATEMENT OF STANDING**

93
94 Jeffrey T. Maehr - hereinafter “Petitioner” – has standing to petition this court to quash the 3rd
95 party IRS summonses (copy attached) for reason:

96
97 Petitioner has timely filed this petition, postmark attesting, within the 20-day period following
98 the date of mailing of the Notices of summons, April 7, 2008. 7609(a)(2); Petitioner is the
99 persons who is identified in the description of the records contained in the Summons on Aurora
100 Loan Service; Petitioner claims an interest relating to personal, private information being
101 summonsed under Color of Law.

102
103 **CONSTRUCTION:**

104
105 Congress wanted third-party record keeper provision of subsec. (a)(3) of this section to be
106 construed broadly in order to give taxpayers every opportunity to voice their privacy interests
107 when those interests are implicated. *Fink v. U.S.*, E.D.Mo.1983, 578 F.Supp. 617.

108 This section permitting intervention of taxpayer when records held by a third-party record keeper
109 are subpoenaed by the Internal Revenue Service should be broadly construed. *U. S. v. New York*

110 *Telephone Co.*, C.A.2 (N.Y.) 1982, 682 F.2d 313.

111
112 Strict compliance with terms of subsec. (b)(2) of this section is jurisdictional, since the United
113 States is consenting to waive its sovereign immunity from suit in the area of issuance of such
114 summonses. *Yocum v. U.S.*, N.D.Ind.1984, 586 F.Supp. 317.

116 **PETITION TO QUASH**

117
118 Petitioner requests the third-party Summons to Aurora Loan Service be Quashed based upon the
119 following, under Rules of Civil Procedure, Affidavit, and Case law:

120
121 a) The IRS has no jurisdiction over Petitioner because IRS denies it is a Federal Agency,
122 so it has no authority to be requesting personal information from any company I am privately
123 contracted with: (See attachment, labeled Exhibit A).

124
125 b) Internal Revenue Code is NOT positive law, and refers ONLY to those who have
126 entered into an employment agreement with the U.S. government, which Petitioner has not,
127 therefore the IRS has NO jurisdiction over this issue or my personal records anymore than
128 Microsoft would have. Agents referring to IR Code (See attachment, labeled Exhibit E).

129
130 c) Summons is facially void: Rules of Civil Procedure, Rule 4, requires a Judge's
131 signature and stamp of the court, both of which are lacking in this summons, among other

132 voiding deficiencies required by R.C.P. Rule 4., and the Agents are acting under the Color of
133 Law, while they require Petitioner to comply with Rules of Civil Procedure, Rule 4. (See
134 attachment, labeled Exhibit J).

135
136 d) Agents Sothen and Gills (Herein known as “Agents”), have not provided Petitioner
137 with any documents verifying any facts at issue with Petitioner.

138
139 e) Agents are required by law to NOTICE me of their intent to contact third party
140 companies/individuals, PRIOR to sending Summons, and they did not.

141
142 f) Petitioner has been in constant contact with the IRS for over 5 years, answering all
143 correspondence, providing affidavit evidence, and requesting information and clarification of all
144 issues, and the IRS has not responded to the affidavit or requests with anything but more
145 frivolous requests for information, or hearsay testimony. IRS refusal to rebut Petitioner’s
146 Affidavit creates **Prima Facie Evidence that the facts are deemed admitted as true** on this
147 and all related issues.

148
149 Supporting Case Law:

150
151 **Non Rebutted Affidavits are “Prima Facie Evidence in the Case”, United States vs. Kis, 658**
152 **F.2d, 526, 536-337 (7th Cir. 1981); Cert Denied, 50 U.S. L.W. 2169; S.Ct. March 22, 1982.**
153 **“Indeed, no more than (Affidavits) is necessary to make the Prima Facie Case.” Seitzer v.**

154 **Seitzer, 80 Cal. Rptr. 688 “Uncontested Affidavit taken as true in support of Summary**
155 **Judgment.” Melorich Builders v. The SUPERIOR COURT of San Bernardino County**
156 **(Serbia) 207 Cal.Rptr. 47 (Cal.App.4 Dist. 1984) “Uncontested Affidavit taken as true in**
157 **Opposition of Summary Judgment.”**

158
159 "Silence can only be equated with fraud where there is a legal or moral duty to speak, or where
160 an inquiry left unanswered would be intentionally misleading. . . We cannot condone this
161 shocking behavior by the IRS... This sort of deception will not be tolerated and if this is routine
162 it should be corrected immediately." U.S. v. Tweel, 550 F.2d 297, 299. See also U.S. v.
163 Prudden, 424 F.2d 1021, 1032; Carmine v. Bowen, 64 A. 932.

164
165 g) Agents have committed Fraud by Concealment: Agents are required by law to provide
166 any third party Summoned, notice that unless Summons has Judge’s signature and stamp of the
167 court on the document, they are not legally required to respond, and to NOT do so is to coerce
168 Summoned into breaking their affirmative duty to protect my personal, private information.

169
170 h) Agents have shown gross negligence and wanton disregard for already filed
171 documents, which they are ignoring, or for which they did NOT perform “Due Diligence,” and
172 their “Higher Duty” to obtain all facts already in record, including the Affidavit filed (See
173 attachments, all labeled Exhibit I - please note that Petitioner has not provided copies of all
174 correspondence due to time and fund restraints, but has provided certified mail receipt copies
175 showing delivery of other relevant material in attempts to correspond with the IRS).

176 .
177 I) The IRS has failed to provide the legally required “Determination Letter” regarding
178 any tax liability status for years, 2004, 2005, 2006, and is in default. (See Attached, labeled
179 Exhibit B).

180
181 j) Petitioner’s 4th Amendment protect is being violated without due cause or process:
182 “The right of the people to be secure in their persons, houses, papers, and effects, against
183 unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon
184 probable cause, supported by Oath or affirmation, and particularly describing the place to be
185 searched, and the persons or things to be seized.” Agents attempts to obtain petitioner’s personal
186 records from others Petitioner is contracted with is unreasonable, given the amount of good faith
187 efforts Petitioner has shown toward communicating with the IRS.

188
189 k) The Paperwork Reduction Act (PRA) was specifically created to prevent or minimize
190 this sort of response to unrelenting harassment and malicious “prosecution” and yet, Petitioner is
191 being forced, yet again, to spend inordinate amounts of time and money responding to Agents’
192 frivolous attempts. This Motion to Quash Summons is but one of four Petitioner is having to
193 prepare and file, in four separate states.

194
195 l) The government’s power to investigate is not without limits. To obtain enforcement of
196 a summons, the IRS must demonstrate the following elements, citing *United States v. Powell*,
197 379 U.S. 48, 57-59, 85 S.Ct. 248, 255, 13 L.Ed.2d 112 (1964):

- 198 -The investigation will be conducted pursuant to a legitimate purpose;
- 199 -The inquiry will be relevant to that purpose;
- 200 -The information sought is not already in the IRS' [s] possession;
- 201 -That the IRS has taken the administrative steps necessary to the issuance of a summons;
- 202 -That the IRS has not referred the case to the Department of Justice for criminal
- 203 prosecution.

204

205 m) Petitioner claims “bad faith” by Agents as Petitioner has exercised his Statutory

206 rights to receive information by having filed multiple requests (See affidavit and attached

207 documents), under authority of the Privacy Act and FOIA, which the IRS remains in default in.

208

209 n) Petitioner claims “bad faith” by Agents who pursue disclosure of sensitive

210 information, a significantly protectable interest, by Summonses absent verifying any prior

211 lawful determination that the Petitioner is a “taxpayer,” which request has been made in the

212 past and which was never produced. (See attached, labeled Exhibit’s C)

213

214 o) Agents have ignored a previous attempt by IRS Agent Kuxhausen to examine my

215 personal records, and which Petitioner responded to with legal documentation for verification,

216 and which agent Kuxhausen later discontinued said examination due to evidence and challenge.

217 (See attachment, labeled Exhibit D).

218

219 p) IRS non-responsiveness has kept this matter from being resolved, now for over 5

220 years, causing Petitioner stress and duress, and countless hours and many thousands of dollars to
221 respond and go beyond responding, showing MORE than good faith, to seek complete factual
222 information, which they have refused to provide.

223
224 q) This is completely disrespectful of the Court's resources, in forcing Petitioner to
225 defend Petitioner's Constitutional Rights and Privacy from invasive measures by Agents who
226 have not already done their jobs, and are fishing, causing Petitioner and others undue costs and
227 anxiety, and are doing so under the color of law.

228
229 r) Agents are attempting to circumvent the Rule of Law, which is providing false
230 information and force against the Summoned. In their complying with a void Summons, under
231 duress and the Color of Law, third party companies could cause a crime against Petitioner to
232 occur under 15 U.S.C., 6801, creating a future burden on the courts which surely will occur if
233 Summoned party responds to this void Summons, and violate my privacy.

234
235 s) Petitioner has twice requested, as a last resort over the last few years, to have a
236 hearing to determine all the issues and to review all evidence presented, and the IRS has failed to
237 respond, or even acknowledge this request, nor have they provided ANY form of assessment, as
238 required by law, through which petitioner may begin administrative remedies.

239
240 t) I am naming IRS contacts I've been forced to respond to over the past 5 years which
241 are represented by the Certified mail receipts in attachment labeled Exhibit H: Agent Marvin

242 Otero, Cincinnati, OH., unnamed Agents in IRS, Ogden, UT., Agent David Rehbein, in
243 Farmington, NM., unnamed agents in Holtsville, NY., unnamed Agents in Fresno, CA.,
244 unnamed Agents in Boston, MA., unnamed Agents in Seattle, WA.

245
246 u) Agents provided cover letter with notice of Summons to 3rd parties, and provided
247 recourse to intervene, but FAILED to provide adequate filing information which could allow a
248 denial of the Petitioner’s motion to Quash, thereby committing Fraud by Concealment, namely
249 that it is required to file with the U.S. Attorney General, and the respective District Attorneys in
250 the areas of those receiving Summons. (See attachment, labeled Exhibit J).

251
252 **Petitioner maintains they have met their burden to submit a “minimal**
253 **amount of evidence” to support contention of civil procedure violations,**
254 **Agents/IRS lack of good faith, potential fraud by Agents/IRS, and supporting**
255 **Cause for Quashing third party Summons.**

257 Do Now Request:

258 Citizen’s of these United States have only the Rule of Law and the Constitution to govern
259 this land. We are expected to know and comply with the law. In order to do that, we must read
260 the law and study all facets of it to determine where we are liable. When one comes to find that
261 the Law has been used maliciously against them, they have ONLY to resort to the law and
262 Constitution, and the Judicial Machinery to find relief and to bring government’s under the

263 chains of the Constitution. My correspondence with the IRS over the past 5 years has only been
264 met with threats, intimidation and actual theft of monies from my account, and with NO actual
265 law or facts provided.. They present Prima Facie evidence that they have NO desire to comply
266 with the law and to serve the public. Therefore, Petitioner requests the following:

267
268 1. The Honorable Court Grant this Petition to Quash the 3rd party IRS summons noticed
269 to this court.

270
271 2. It is not now, nor has it ever been the intent of Petitioner to avoid any obligation
272 Petitioner might lawfully and Constitutionally be subject to, to the best of Petitioners' ability. In
273 order that the Petitioner can willfully comply in good faith and with all due alacrity, Petitioner
274 requests this Honorable Court to require the IRS/Agents be ordered to answer Petitioners'
275 Affidavit with factual, lawful answers to all questions, point by point, regarding all elements
276 related to IRS authority and jurisdiction, income taxation and liability, and to do so within 21
277 days, considering they are claiming to act within the law and Constitution, therefore 21 days
278 should be adequate time to prepare what they should already know and have on record. If no
279 rebuttal response, or frivolous and incomplete response, is not forthcoming within that 21 day
280 time, IRS will be ordered to publish in 4 major national new papers, their failings, or answers, to
281 each and every IRS related point, and to provide adequate law and support for income taxation
282 for private individuals.

283
284 3. Declaratory Judgement that Petitioner is not a "taxpayer" as mislabeled by the IRS

285 according to all existing evidence provided, and to remove all records related to any aspect of
286 Petitioner's fraudulent "taxpayer" status with IRS:

287
288 "The revenue laws are a code or system in regulation of tax assessment and collection. They
289 relate to taxpayers and **not to non-taxpayers**. The latter are without their scope. **No procedure**
290 **is prescribed for non-taxpayers and no attempt is made to annul any of their rights and**
291 **remedies in due course of law**. With them Congress does not assume to deal, and **they are**
292 **neither of the subject nor of the object of the revenue laws**. Persons who are not taxpayers are
293 not within the system and can obtain no benefit by following the procedures prescribed for
294 taxpayers..." United States Court of Claims, Economy Plumbing and Heating v. United States,
295 470 Fwd 585, at 589 (1972) (Emphasis mine).

296
297 4. Compensation for costs of time and expenses in responding to IRS void actions, to
298 include costs for filing Petition, at 32 hours research and preparation, at \$75 per hour. (See
299 attachment, labeled Exhibit K).

300
301 5. Injunctions against Agents/IRS from attempting any future attempts to circumvent the
302 law and my rights, and cease and desist any and all correspondence, unless they can provide
303 lawful, factual authenticated evidence that would bring me within IRS jurisdiction, such as being
304 an employee of the U.S. Government.

305
306 6. Default Judgement with enforcement of Affidavit regarding financial claims on

307 refunds fraudulently obtained from Petitioner by IRS without lawful authority. Refund based as
308 stated in Affidavit, with interest, to be provided within 21 days of Judgement as described in
309 Affidavit.

310
311 Enclosed: Petition to Quash, Attachments: A, B, C - Original Affidavit with supplementary
312 documentation; D, E, F, G, H, I, J, K; Certificate of Mailing.

313
314 Respectfully submitted and dated this 23 day of April, 2008.

315
316 _____
317 Jeffrey T. Maehr, Pro Se

318 924 E. Stollsteimer Rd

319 Pagosa Springs, CO 81147

320
321 I declare under penalty of perjury that to the best of my knowledge and belief, based on this
322 testimony, that the statements therein are true and correct, and certify Jeffrey T. Maehr appeared
323 before me with picture identification, and acknowledged this document before me on;

324
325 Date: _____ /s/ _____

326
327 (NOTARY PUBLIC'S JURAT)